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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,566	07/26/2002	Priya Gopinath	124320	3231

23413 7590 08/07/2007

CANTOR COLBURN, LLP
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EXAMINER	
KIM, CHONG R	
ART UNIT	**PAPER NUMBER**
2624	

MAIL DATE	DELIVERY MODE
08/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/064,566	Applicant(s) GOPINATH ET AL.	
	Examiner Charles Kim	Art Unit 2624	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☒ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

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Declaration Under 37 CFR 1.131

The Declaration filed on July 17, 2007, under 37 CFR 1.131 has been considered but is ineffective to overcome the Hong reference.

On June 14, 2006, Examiner requested information under 37 CFR 1.105 with regards to the "current calibration process" cited on page 2 of Exhibit A of Applicants' declaration filed April 3, 2006. In response, on November 14, 2006, Applicants submitted three articles containing information about the "current calibration processes," one of which was the Hong article.

On February 2, 2007, Examiner expressed confusion with regards to whether Hong was overcome by the Declaration (see pages 2-3 of Final Action). In particular, Examiner suggested that Applicants might have admitted that Hong was prior art because Applicants submitted the Hong reference as containing information about the "current calibration processes" referred to in their Declaration, Exhibit A. In response, on May 2, 2007, Applicants allege (page 2) that "[they] submitted the Hong article to point out that the Agatston method, which was described in the printed publication in 1990, was still being referred to as a "traditional scoring method" in an article dated May 1, 2002. Moreover, Applicants contend (page 2) that "[they] believe that the Agatston method is an example of a 'current calibration process' in use at the time of Applicants' invention.

After taking a closer look at the Hong article, particularly the second paragraph that refers to Agatston, there still appears to be confusion as to whether the Applicants have overcome the Hong article. For instance, the second paragraph of Hong refers to Agatston for a disclosure of traditional scoring methods, not traditional calibration processes. In their

arguments filed on May 2, 2007, Applicants appear to be equating the two. However, there is a clear distinction between the scoring method and the calibration process, as evident in Applicants' BACKGROUND OF INVENTION section of their specification. In paragraph 5, the scoring method is described as:

> The amount of calcium located in the heart can be totaled, resulting in a total calcium score that can be compared to other patients of the same age and characteristics...there are three scores which can quantify the plaque. The Agatson score is the most popular score among radiologists assessing cardiac images and is widely used by all vendors offering coronary calcium scoring packages.

Paragraph 6 describes the calibration process as:

> One way to convert the CT HUs into density, expressed as milligrams, is to place a phantom with calcium inserts of known densities underneath the patient during the same CT scan operation...Then, the density values of the calcium inserts, expressed in milligrams, can be used to translate the CT HUs into millgram values.

Thus, it appears that the scoring method determines the amount of calcium expressed in HUs, while the calibration process converts the CT HUs into density expressed as milligrams.

In light of the above, the Examiner is not convinced that Hong was submitted to point out that the Agatston method was a "current calibration process," as Applicants contend. Agatston does not refer to any calibration processes, but instead merely discloses a scoring method that determines the calcium score expressed in HUs. On the other hand, Hong is clearly directed to a calibration process that converts the HUs into density expressed in milligrams. Until Applicants' provide a persuasive explanation to the contrary, Examiner construes Applicants' submission of the Hong article in response to Examiners' request for more information regarding "current

calibration processes" as an admission that Hong was prior art. Therefore, Examiner maintains the Final Rejection mailed May 17, 2007.

Charles Kim
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July 31, 2007

ATTACHMENT 'A' 1/2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No.:	10/064,566	:	Confirmation No.: 3231
Applicant:	Priya Gopinath et al.	:	Group Art Unit: 2621
Filed:	July 26, 2002	:	Examiner: Lavin, Christopher L.
Docket No.:	124320 / GEM-0041	:	

For: METHOD, SYSTEM AND COMPUTER PRODUCT FOR CALCULATING MASS SCORES

July 11, 2007

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION UNDER 37 CFR 1.131

Kishore Acharya declares and states that:

1. I am an inventor of the subject matter of the rejected claims in the above-identified patent application.

2. I conceived in the United States subject matter disclosed and claimed in the above-identified patent application prior to March 29, 2002, and then diligently reduced the invention to practice in the United States before March 29, 2002.

3. As evidence in support of this prior conception and reduction to practice, submitted herewith is the following evidence of activity done in the United States, with dates and proprietary material redacted:

(a) Exhibit A is a copy of my invention disclosure form (IDF) created prior to March 29, 2002. The IDF contains 6 pages.

(i) The IDF states at the top of page 1 "Date Received: [redacted date prior to March 29, 2002]".

(ii) The IDF states under "Advantages of the Invention" on page 3 of the IDF, "The invention serves to address the need of an accurate mass score ..."

(iii) The IDF describes the claimed invention under the section titled "Invention Description" on pages 1-2. Excerpts of this section include: "The calibration process involves determining the CT HU for each of the calcium

Do Not Enter

CW

7-30-07